

**2022 LiveLaw (SC) 507**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**N.V. RAMANA; CJI., KRISHNA MURARI; J., HIMA KOHLI; J.**

**MAY 20, 2022**

**CRIMINAL APPEAL No. 867 of 2022 (Arising out of SLP (Crl.) No. 9161 of 2021)**

**S.P. VELUMANI *Versus* ARAPPOR IYAKKAM AND ORS.**

**Constitution of India- Article 21- Fair Trial - It must be emphasized that prosecution by the State ought to be carried out in a manner consistent with the right to fair trial, as enshrined under Article 21 of the Constitution. (Para 27)**

**Fair Investigation - Supreme Court criticises Madras High Court for keeping preliminary enquiry report in sealed cover without sharing with the accused- "When the State has not pleaded any specific privilege which bars disclosure of material utilized in the earlier preliminary investigation, there is no good reason for the High Court to have permitted the report to have remained shrouded in a sealed cover. (Para 28)**

**Fair investigation - The principles of natural justice demanded that the appellant be afforded an opportunity to defend his case based on the material that had exonerated him initially, which was originally accepted by the State. (Para 22)**

*(Arising out of impugned final judgment and order dated 08-11-2021 in WP No. 34845/2018 passed by the High Court of Judicature at Madras)*

*For Petitioner(s) Mr. Gaurav Agrawal, AOR*

*For Respondent(s) Mr. Gautam Narayan, AOR Mr. Ranjit Kumar, Sr. Adv. Mr. V. Krishnamurthy, Sr. Adv. Dr. Joseph Aristotle S., AOR Ms. Nupur Sharma, Adv. Mr. Shobhit Dwivedi, Adv. Mr. Sanjeev Kumar Mahara, Adv. Mr. D.Kumanan, AOR Mr. Sheikh F. Kalia, Adv.*

**J U D G M E N T**

**N.V. RAMANA , CJI**

1. Leave granted.
2. This appeal is filed against the impugned order dated 08.11.2021 passed by the High Court of Madras in Writ Petition No. 34845 of 2018.
3. The brief facts necessary for adjudication of this dispute are as follows: the appellant was a Cabinet Minister in the State of Tamil Nadu from 2014. On 11.09.2018, one Mr. R.S. Bharathi filed a complaint with the Directorate of Vigilance and Anti-Corruption. He also filed a criminal petition before the Madras High Court, being Crl.O.P. No. 23428 of 2018. On the very next day, respondent No.1 filed a complaint before Director, Directorate of Vigilance and Anti-Corruption and SP, Anti-Corruption Bureau, CBI. As no action was forthcoming by the aforesaid Authorities, respondent No.1 filed a writ petition registered as WP No. 34845 of 2018 before the High Court seeking, *inter alia*, a mandamus directing the Director, Directorate of Vigilance and Anti-Corruption to register an FIR on the basis of the complaint lodged by him and to constitute an SIT

for the purpose of investigation. It may be necessary to note that both, the writ petition and Crl.O.P., were tagged and heard together.

4. Broadly, the allegation against the appellant is that while he was serving as a Minister, he is alleged to have misused his powers to influence the tender process and ensured that tenders were awarded to his close aides.

5. When the aforesaid writ petition was listed for the first time before the High Court, the High Court issued notice and directed the respondents therein to file their counter affidavits. On 18.10.2019, when the aforesaid writ petition came up for hearing, the High Court passed following order: -

“13. In the light of the apprehension expressed by the learned counsel for the petitioner that the 4<sup>th</sup> respondent is one of the senior Ministers in the Cabinet and the investigation is being carried by an Officer who is in the rank of the Deputy Superintendent of Police, this Court is of the considered view that the preliminary enquiry hereinafter shall be carried on by Ms. Ponni, IPS, Superintendent of Police, Directorate of Vigilance and Anti-Corruption and the progress being made in the preliminary enquiry, shall be monitored by the Director of Vigilance and Anti-Corruption.

14. The Director of Vigilance and AntiCorruption shall file the Status Report as to the progress being made in the preliminary enquiry, with supporting documents in sealed cover for perusal of this Court.”

6. Accordingly, on 01.11.2019, a status report was produced before the High Court. On perusal of the aforesaid report, the High Court granted time to complete the preliminary enquiry.

7. On 16.12.2019, the Investigating Officer appointed by the High Court completed the preliminary enquiry and submitted a final report to the Director of Vigilance and Anti-Corruption. In view of this, the High Court directed the Director of Vigilance and Anti-Corruption to produce the aforesaid enquiry report in a sealed cover before the next date of hearing.

8. It is important to note that in the meanwhile on 17.02.2020, the State Government filed an application being W.M.P. No. 4747 of 2020 in W.P. No. 34845 of 2018, before the High Court indicating as under: -

“9. It is submitted that these facts are being brought on record and it is the submission of the petitioner herein that after following all the process contemplated by Law, the Government of Tamil Nadu decided to accept the report on the Preliminary Enquiry, which had come to the conclusion that the commission of cognizable offence had not been made out.

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In the light of the above, it is prayed that this Hon'ble Court may be pleased to take the above facts on record and dispose of the writ petition as having become infructuous and pass such other order/orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.”

9. Accordingly, on 19.02.2020, the High Court passed the following order in the captioned application filed by the State Government: -

“3. In the light of the said development, the petitioner/2<sup>nd</sup> respondent in the writ petition prays for appropriate orders for disposing of the writ petition as having become infructuous.

4. Dr. V. Suresh learned counsel appearing for the 1<sup>st</sup> respondent/writ petitioner prays for time to file the counter affidavit.

5. The decision taken by the Vigilance Commission accepted by the Government shall be submitted before this court in a sealed cover.”

**10.** As the matter stood thus, there was a change in the political dispensation of the State Government. Interestingly, the State, while relying upon a CAG report, subsequently recanted from its earlier stand. The High Court, without applying its mind, passed the following order on 19.07.2021:-

“3. It is submitted on behalf of the State that the performance of the contractors and the contracts in general engaged the attention of the Comptroller and Auditor General and adverse comments have been made. The State says that it will investigate into the matter to ensure that those involved are taken to task. For the purpose of conducting investigation, the State seeks some time.

4. Let the matter appear in the second week of October, 2021. The State should spare no effort in getting to the bottom of the matter and proceed against those found to be responsible for the irregularities.

5. Counter-affidavit may be filed by the respondents in the meantime.”

**11.** Relying on the aforesaid observations, the State registered an FIR, being FIR No.16/2021 dated 09.08.2021, against 17 accused persons, including the appellant herein under Section 120B r/w Sections 420 and 409 of the IPC and Section 13(2) r/w Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 r/w Section 109 of the IPC.

**12.** The appellant herein filed an application being W.M.P. No. 24569 of 2021 in the writ petition pending before the High Court, seeking a copy of the preliminary Enquiry Report dated 18.12.2019 and associated documents submitted by Ms. R. Ponni, Superintendent of Police, Directorate of Vigilance and Anti-Corruption as well as the decision taken by the Vigilance Commission.

**13.** The High Court *vide* impugned order dated 08.11.2021, while dismissing the appellant’s application, disposed of the entire case and observed as under: -

“6. It may do well to decline the request made by the fourth respondent in W.P. No.34845 of 2018 to make over a copy of the preliminary report to the fourth respondent immediately. The law has to be allowed to take its own course. Upon completion of the investigation, a report will no doubt be filed and such report should be filed within the next ten weeks, be it in the form of a charge-sheet or as a final report. In course of the material being made over to the fourth respondent under Section 207 of the Code of Criminal Procedure, 1973, if the preliminary report forms the basis for any of the charges sought to be framed, a copy of such preliminary report may be made over to the fourth respondent and it will also be open to the relevant criminal court to consider whether the petitioner may also obtain a copy thereof.

7. It is made clear that the observations in course of the orders should not count against the fourth respondent if, ultimately any charge-sheet were to be filed against him or any charges framed. In view of the fact that the investigation has almost come to an end and since the charge-sheet or final report is to be filed within the next ten weeks, no useful purpose would be served in keeping these petitions alive.

8. Accordingly, W.P. No.34845 of 2018 and CrI.O.P. No.23428 of 2018 are closed. Consequently, W.M.P. Nos.4747 of 2020 and 24569 of 2021 are closed.”

**14.** Aggrieved by the aforesaid order, the appellant has filed the present appeal by way of Special Leave. It may not be out of place to note that the appellant has also filed CrI.M.P.No.56512/2022 before this Court seeking quashing of the aforesaid FIR.

**15.** The learned Senior Counsel appearing for the appellant contended orally and through written submissions as under:

(i) That there is no reason for not making over the documents to the appellant as the State has not claimed that the documents are privileged.

(ii) The reliance on two reports by the Comptroller and Auditor General of India (hereinafter “**CAG**”) by the State of Tamil Nadu is misplaced as there is no criminality disclosed in the aforesaid report.

(iii) That FIRs cannot be lodged solely on basis of the CAG report.

(iv) The appellant should have been given an opportunity to counter the allegations, and the State could not have registered the FIR in a haste, based on certain general observations by the High Court.

(v) This case is a clear case of regime revenge wherein change in political dispensation has resulted in the State recanting its initial position to abuse the process against the appellant herein.

**16.** On the contrary, the learned Senior Counsel appearing on behalf of the State of Tamil Nadu has contended that: -

(i) There is no provision of law which mandates disclosure of preliminary Enquiry Report before the stage contemplated under Section 207 of the Cr.P.C. However, the accused will be given the relied upon documents at the time of framing charges, wherein he can take appropriate legal recourse.

(ii) The FIR was filed based on a fresh enquiry conducted in the light of the CAG report and not solely based on the preliminary Enquiry Report filed in the aforesaid writ petition.

**17.** At the outset, it may be noted that an application was filed before us seeking quashing of the subsequent FIR. However, the learned Senior Counsel appearing on behalf of the appellant has not pressed the same before us. He has limited his submissions only to the aspect concerning non-disclosure of the preliminary enquiry report of Ms. Ponni, IPS, Superintendent of Police, Directorate of Vigilance and AntiCorruption and the ancillary documents. Accordingly, we intend to deal with this aspect alone.

**18.** Having heard learned counsel for the parties and on perusing the documents available on record, we may note that the facts of this case are clear. Initially, a private complaint was filed by respondent No.1 and thereafter, a writ petition was filed by him seeking investigation into the allegations made in the complaint. When the matter was taken up by the High Court, it directed an enquiry by a responsible officer, Ms. Ponni, Superintendent of Police, Director of Vigilance and Anti-Corruption. Accordingly, the

Court appointed officer submitted her preliminary enquiry report to the Director of Vigilance and Anti-Corruption, who in turn submitted a final report before the High Court in a sealed cover. In the meanwhile, the Government took a decision to close the case based on the aforesaid report submitted by the Court appointed officer. Rather than deciding this issue, the High Court adjourned the matter by a month.

19. However, it appears that due to various reasons, the matter could not be listed until 19.07.21. In the meanwhile, the State Government had changed. In a turn of events, the State Government went back on their earlier stand to close the criminal case. Instead, the State Government submitted before the High Court that they intended to conduct further investigation in the aforesaid matter.

20. In our considered opinion, the High Court has committed a patent error in not taking the matter to its logical conclusion. Without considering the material before it, and by merely relying on the submissions made by the learned counsel for the State, the High Court has made sweeping observations which are prejudicial to the appellant. It was the High Court which had ordered that a preliminary enquiry be conducted and a report be submitted by the special investigating officer. However, once the enquiry was completed, the High Court failed to even peruse the said report. Rather, the High Court left the decision completely in the hands of the State Government. Such an approach, as adopted by the High Court in the present matter, cannot be countenanced in law.

21. It is a settled principle that the State cannot blow hot and cold at the same time. When the State Government changed its stand, the High Court neither provided the appellant an opportunity to defend himself, nor sought a reasoned justification from the State for having turned turtle. Although the High Court directed the appellant to file a counter affidavit in the writ proceedings, the State hastened to register the aforesaid FIR on 09.08.2021.

22. It is noteworthy that the initial affidavit filed by the State was categorical that they did not intend to pursue action against the appellant herein. However, the subsequent change of stand by the State clearly contradicts the expectation brought about by the initial affidavit. The principles of natural justice demanded that the appellant be afforded an opportunity to defend his case based on the material that had exonerated him initially, which was originally accepted by the State.

23. Therefore, the only issue which requires this Court's consideration is whether the appellant herein is entitled to the preliminary report in the present facts and circumstances.

24. Learned counsel for the State has contended that the accused would be entitled to access the report only after the Magistrate takes cognizance in terms of Section 207 of the CrPC. He has relied on ***In Re: Criminal Trials Guidelines Regarding Inadequacies and Deficiencies v. State of Andhra Pradesh & Others*, (2021) 10 SCC 598** to contend that the accused is entitled to seek documents only in terms of Section 207 of the CrPC and any production of the documents beyond the ambit of aforesaid section, is untenable in law.



**25.** On the other hand, the learned counsel for the appellant has distinguished the present case on the fact that the subsequent FIR was filed due to direct judicial interference.

**26.** We may note that the contention of the State may be appropriate under normal circumstances wherein the accused is entitled to all the documents relied upon by the prosecution after the Magistrate takes cognizance in terms of Section 207 of CrPC. However, this case is easily distinguishable on its facts. Initiation of the FIR in the present case stems from the writ proceedings before the High Court, wherein the State has opted to re-examine the issue in contradiction of their own affidavit and the preliminary report submitted earlier before the High Court stating that commission of cognizable offence had not been made out. It is in this background we hold that the mandate of Section 207 of CrPC cannot be read as a provision etched in stone to cause serious violation of the rights of the appellant-accused as well as to the principles of natural justice.

**27.** Viewed from a different angle, it must be emphasized that prosecution by the State ought to be carried out in a manner consistent with the right to fair trial, as enshrined under Article 21 of the Constitution.

**28.** When the State has not pleaded any specific privilege which bars disclosure of material utilized in the earlier preliminary investigation, there is no good reason for the High Court to have permitted the report to have remained shrouded in a sealed cover.

**29.** In view of the aforesaid discussion, and taking into consideration the peculiar facts of the instant case, particularly the fact that the High Court had ordered an enquiry and obtained a report without furnishing a copy thereof to the appellant and unceremoniously closed the writ petition, we deem it appropriate to issue the following directions: -

- a. The High Court is directed to supply a copy of the report submitted by Ms. R. Ponni, Superintendent of Police along with the other documents to the appellant herein.
- b. Writ Petition No. 34845 of 2018 and CrI.O.P. No. 23428 of 2018 are restored on the file of the High Court of Madras.
- c. The High Court is directed to dispose of the cases on their own merit, uninfluenced by any observation made herein.
- d. Although the prayer for quashing of the FIR was not orally pressed before this Court, however, the appellant is granted liberty to seek appropriate remedy before the High Court.

**30.** Accordingly, the appeal is disposed of on the above terms.

Pending application, if any, stands disposed of.